THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.6653 of 2005

Date of Decision: 28 - 8 - 2006

Vishnu **.....Petitioner**

v.

Subhash Chand and another **.....Respondents**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

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Present: Mr.Shiv Kumar, Advocate
for the petitioner.

Mr.Manoj Sood, Advocate
for respondent No.1.

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P.S.PATWALIA, J. (Oral)

The present revision petition has been filed challenging order dated 23.11.2005 vide which an application under Order VI Rule 17 CPC for amendment of the plaint filed by the plaintiff was allowed.

Brief facts of the case are that an agreement to sell was executed by the petitioner with the respondents on 15.9.2003. The sale deed had to be executed or registered on or before 14.9.2005. In the meanwhile, however, the petitioner tried to sell the suit property to a third party. Accordingly, the plaintiff, respondent No.1 in this revision petition, filed the present suit for permanent injunction restraining the petitioner, who was impleaded as defendant No.1 therein, from alienating the suit property. During the pendency of the suit, the date for execution of the sale deed i.e. 14.9.2005 matured. When sale deed was not executed, the plaintiff moved an application for amendment of the plaint so as to plead this fact

in the suit. It is this amendment which has been allowed by the trial Court.

Learned counsel for the petitioner has submitted that by granting this amendment, nature of the suit itself has been changed. He states that no such change should have been allowed. He relies upon a judgment of the Hon'ble Supreme Court in **Punjab National Bank v. Indian Bank and another**, 2003(1) PLJ 458. Learned counsel relied upon the following observations in the judgment:-

> "18. The position that emerges from the decisions referred to earlier is that an amendment would generally not be disallowed except where a time barred claim is sought to be introduced, there too it would be one of the factors for consideration or where it changes the nature of the suit itself or it is *mala fide* or the other party cannot be placed in the same position had the plaint been originally filed correctly, that is to say, the other side has lost right of a valid defence by subsequent amendment. We find that no such element is present in the case in hand so as to disallow the amendment in the plaint. No undue advantage is sought to be taken as the claim in terms of dollars is mentioned in the plaint and the relief clause and the defendants are not to be taken by surprise. The amendment only clears the confusion, if any, as to the terms in which relief is sought. It does not revive a time barred and dead claim, nor changes the nature of the suit. In the facts and circumstances, it cannot be said to be *mala fide* either."

On the other hand, learned counsel for the respondent-plaintiff contends that the trial Court has rightly granted the amendment as it is necessary to determine the real controversy in dispute between the parties. He further states that amendment can be allowed under Order VI Rule 17 CPC where further cause of action arises during the pendency of the suit and the basic structure of the suit does

not change. He relied upon a recent judgment of the Hon'ble Supreme Court in **Rajesh Kumar Aggarwal & Ors. v. K.K.Modi & Ors.**, 2006(2) RCR (Civil) 577. The observations of the said judgment relied upon are as hereunder:-

> "15. In our view, since the cause of action arose during the pendency of the suit, proposed amendment ought to have been granted because the basic structure of the suit has not changed and that there was merely change in the nature of relief claimed. We fail to understand if it is permissible for the appellants to file an independent suit, why the same relief which could be prayed for in the new suit cannot be permitted to be incorporated in the pending suit.
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> 16. As discussed above, the real controversy test is the basic or cardinal test and it is the primary duty of the Court to decide whether such an amendment is necessary to decide the real dispute between the parties. If it is, the amendment will be allowed; if it is not, the amendment will be refused. On the contrary, the learned Judges of the High Court without deciding whether such an amendment is necessary has expressed certain opinion and entered into a discussion on merits of the amendment. In cases like this, the Court should also take notice of subsequent events in order to shorten the litigation, to preserve and safe-guard rights of both parties and to sub-serve the ends of justice. It is settled by catena of decisions of this Court that the rule of amendment is essentially a rule of justice, equity and good conscience and the power of amendment should be exercised in the larger interest of doing full and complete justice to the parties before the Court."

After hearing learned counsel for the parties, I find no merit in the arguments raised by the learned counsel for the petitioner. In the present case, the cause of action to initiate legal proceedings for specific performance of agreement

to sell arose during the pendency of the civil suit. Therefore it was necessary to have amended the plaint so as to get the controversy comprehensively and effectively determined. I find that the observations made by the Hon'ble Supreme Court in **Rajesh Kumar Aggarwal's case (supra)** are fully attracted to the facts of the present case. I therefore find no merit in this revision petition and the same is accordingly dismissed.

(P.S.PATWALIA)
JUDGE

August 28, 2006.

RC